STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **DTE GAS COMPANY** for a gas cost recovery reconciliation proceeding for the 12-month period ended March 31, 2014.	)))))	Case No. U-17131-R

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER DENYING REHEARING

On June 27, 2014, DTE Gas Company (DTE Gas) filed an application with supporting testimony and exhibits, seeking authority to reconcile its gas cost recovery (GCR) revenues and expenses for the 12-month period ended March 31, 2014. One of the issues in that proceeding was whether the Commission should adopt the Michigan Department of the Attorney General's (Attorney General) proposal for a $35,087 disallowance from DTE Gas's reported expenses related to ANR-Alpena transportation contract costs from the total GCR expenses reported by the company based on the Commission's December 20, 2012 order approving a settlement agreement in Case No. U-16999, wherein the Commission previously approved inclusion of ANR capacity charges in DTE Gas's base rates. In the Commission's June 9, 2016 order (June 9 order), the

Commission agreed with the ALJ and adopted the reasoning and conclusions of the proposal for decision granting the requested disallowance.

DTE Gas's Petition for Rehearing

On July 11, 2016, pursuant to Mich Admin Code R 792.10437(1), DTE Gas filed a petition for rehearing of the June 9 order. In its petition, DTE Gas contends that the ANR transportation agreement at issue in the underlying GCR reconciliation proceeding has been "further amended" and there may be additional amendments in the future. It argues that "there would be significant unintended consequences if all costs under any amendments of the ANR transportation agreement must continue to be recovered through base rates regardless of whether or not those costs are incurred to provide gas supply to the Alpena market." DTE Gas's petition for rehearing, p. 2. It claims that the Commission's decision regarding the costs incurred in the amended contract elevates form over substance in a manner never intended or contemplated by the partial settlement agreement approved in Case No. U-16999. DTE Gas points out that, in its most recent rate case, Case No U-17999, the company requested operations and maintenance (O&M) costs of $1.3 million for incremental costs attributable to the further-amended ANR transportation agreement's 30,000 dekatherm (Dth)/day increase in summer capacity and projected gas purchase receipts from the Alliance interconnect. It explains that it sought this recovery as a placeholder and not a double recovery as was alleged in this case, and that it would rescind its request for O&M recovery of these costs if the Commission would grant GCR recovery. It argues that these incremental costs are properly included in the booked cost of gas sold as defined by DTE Gas's tariff C7.1, regardless of the fact that they are incurred as a portion of the service provided under the new contract that also in part serves the Alpena market. That tariff provides that all costs for gas service related to interstate purchases which includes interstate transport are included in the

booked cost of gas sold recoverable through the GCR factor. It suggests that only those costs related to service to the Alpena market that were the subject matter of the Case No. U-16999 partial settlement agreement are to be recovered through base rates. Yet, it maintains that the Commission's decision on this issue indicates agreement with the Attorney General's argument that all of the costs under the transportation agreement in effect when the settlement in Case No. U-16999 was executed and as amended are to be in O&M and recovered in base rates rather than as booked costs of gas through the GCR factor. Thus, it argues that the Commission should grant rehearing and correct its decision on this issue to prevent substantial amounts of variable commodity costs that should clearly be recovered through the GCR factor from being recovered through base rates.

DTE Gas further maintains that the ANR transportation agreement that existed at the time the settlement agreement was executed in Case No. U-16999 is the contract referenced in the settlement agreement and that if the parties wanted to write the settlement agreement to include all potential future amendments they could have done so. The company further explains that the only purpose of that contract was to provide Alpena market customers with gas supply, and that, therefore, the contract costs that the parties of the settlement agreement agreed should be recovered in base rates could only include costs to serve the Alpena market. Further, DTE Gas claims that the express reference to the contract as "ANR transportation agreement used to serve the Company's Alpena market" in the settlement agreement means that the costs to be recovered in base rates must be costs incurred to serve the Alpena market and not other incremental costs incurred for an entirely different GCR gas supply purpose. It explains that the transportation agreement in effect at the time of the settlement agreement connected storage fields owned by DTE Gas at the Woolfolk station to the Alpena gate station, such that the transportation should be

considered an extension of DTE Gas's own transmission system. According to the company, there were no other costs that were intended to be included in base rates.

Regarding the April 1, 2013 amendment to the ANR transportation agreement, DTE Gas argues that the amendment served a dual purpose of both integrating the company's transmission system by connecting its storage fields to the Alpena system (the original purpose) and also securing purchased gas supply from the ANR-Alliance interconnect near Chicago (the new purpose). DTE Gas argues that it makes sense under traditional ratemaking principles to have a bifurcated cost recovery by charging to O&M the costs of DTE Gas extending its own transportation system to redeliver its own gas supply, and to charge costs to GCR for additional gas supply sourced from Alliance and not from DTE Gas's storage fields. According to the company, this bifurcated approach is the only way to recover the costs at issue in a manner consistent with the company's C7.1 tariff and the settlement agreement in Case No. U-16999. DTE Gas's petition indicates that the dual purposes of "redelivery" of its own gas and of providing additional gas for GCR customers from another receipt point justify the different treatment of the different costs. In summary, DTE Gas argues that the Commission's denial of this request for rehearing will have the unintended consequence of locking inherently-variable commodity costs into base rates that are then subject to regulatory lag, to the detriment of DTE Gas and its customers. Thus, it urges the Commission to grant rehearing and clarify its decision so that going forward under the amended versions of the ANR transportation agreement, DTE Gas's system integration costs of redelivering its own gas to serve the Alpena market are O&M costs recoverable through base rates, and DTE Gas's commodity costs and reservation charges for additional gas supply are recoverable through GCR proceedings.

Staff's Answer

The Staff responds to DTE Gas's petition for rehearing by agreeing that the Commission's order has the unintended consequence of DTE Gas seeking $1.3 million as O&M costs in its current rate case in Case No. U-17999 that are attributable to the amended ANR agreement given further amendments to the contract that provide for a 30,000 Dth/day increase in summer capacity and projected gas purchase receipts from the Alliance interconnect. The Staff agrees with DTE Gas that the Commission's decision in the June 9 order will lock "inherently variable commodity costs into base rates that are then subject to regulatory lag." Staff's answer, p. 3, quoting DTE Gas's petition for rehearing, p. 8. The Staff asserts that the Commission should allow DTE Gas to recover the costs associated with the amended ANR agreement in its GCR reconciliation case. The Staff asserts that these are legitimate Act 304 costs of gas charges, and urges the Commission to grant the petition so as to approve the recovery of these costs in a GCR reconciliation case.

Attorney General's Answer

The Attorney General responds by arguing that the Commission cannot consider evidence from DTE Gas's most recent rate case in Case No. U-17999 that was not a part of the record evidence in this case. The Attorney General explains that the parties in this proceeding lack the opportunity to examine the issue through discovery and cross examination. He maintains that this rehearing petition is simply a collateral attack on the utility's most recent gas rate case and that any unintended consequences regarding amendments in Case No. U-17999 should be addressed in that case. The Commission should not allow DTE Gas to argue the issue in this proceeding where there is no record evidence of these subsequent amendments. Accordingly, the Attorney General asks the Commission to deny DTE Gas's petition for rehearing.

Discussion

Mich Admin Code R 792.10437 of the Commission's Rules of Practice and Procedure provides that an application for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. An application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

As discussed below, the Commission finds that DTE Gas has failed to meet its burden of demonstrating legitimate grounds for granting rehearing on any of the issues presented in its petition. Thus, the request for rehearing should be denied.

DTE Gas argues that during the reconciliation proceeding in this case, the Attorney General argued that all ANR transportation agreement costs must be recovered as O&M expenses. The classification of ANR reservation charges was first raised in the Attorney General's initial brief in the reconciliation proceeding. At that time, the Attorney General presented Exhibits AG-3 and AG-4, consisting of the ANR transportation agreement and its April 1, 2013 amendment that changed the primary receipt point from "Detroit A&B" to "Alliance." Significantly, no subsequent contract amendments were part of the underlying record. Although DTE Gas claims on rehearing that the Commission's June 9 order affects all subsequent amendments to the company's ANR transportation agreements, this is a mischaracterization of the underlying issue and the scope and reach of the Commission's June 9 order in this case. In the underlying reconciliation proceeding, the issue was the exclusion from GCR expenses of $35,087 of costs related to the initial ANR transportation agreement and its April 1, 2013 amendment. A table of

those transportation costs appears at page 18 of the Attorney General's initial brief. In the Attorney General's initial brief, he addressed the company's testimony about the dual purpose of the April 1, 2013 amendment as well as DTE Gas's position recommending different treatment of bifurcated costs for gas supply purchases as opposed to costs for system integration. Under the Attorney General's reading of the contract and the April 1, 2013 amendment, the delivery point of Alpena is retained in both versions of the contract. He therefore argued that DTE Gas's requested reclassification and treatment of ANR contract costs from base rates to the booked cost of gas sold is not supported by the language differences in the original agreement and the April 1, 2013 amendment presented in Exhibits AG-3 and AG4. The ALJ agreed, and the Commission adopted the ALJ's reasoning and conclusions in this regard. Thus, the only issue decided in the Commission's June 9 order was the treatment of $35,087 of costs specifically identified in the Attorney General's initial brief. Contrary to DTE Gas's claim, the Commission never determined that costs from all subsequent amendments to the contract must be recovered through base rates. Because the Commission never reached such a broad conclusion, DTE Gas's assertion that the June 9 order had the unintended consequence of $1.3 million of costs connected with later amendments of the ANR transportation agreement being classified as O&M expenses in the company's most recent rate case is plainly false.

Further, to the extent that DTE Gas seeks a rehearing on the $35,087 at issue in the reconciliation proceeding based on its position that the April 1, 2013 amendment served a dual purpose of both system integration and provision of gas supply, the company already raised this issue during initial briefing and in its exceptions. DTE Gas may not raise the same arguments on rehearing, simply because it does not agree with the Commission's decision on this issue.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by DTE Gas Company is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

By its action of January 12, 2017.

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Norman J. Saari, Commissioner

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Kavita Kale, Executive Secretary

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Rachael A. Eubanks, Commissioner